

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SEAN S.,

Plaintiff,

-v-

5:22-CV-1071

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

APPEARANCES:

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SOCIAL SECURITY
ADMINISTRATION
Attorneys for Defendant
6401 Security Boulevard
Baltimore, MD 21235

DAVID N. HURD
United States District Judge

OF COUNSEL:

HOWARD D. OLINSKY, ESQ.
CAEDEN SEHESTED, ESQ.

FERGUS J. KAISER, ESQ.
Special Ass't U.S. Attorney

ORDER ON REPORT & RECOMMENDATION

On October 17, 2022, plaintiff Sean S.¹ (“plaintiff”) filed this action seeking review of the final decision of defendant Commissioner of Social Security (“Commissioner” or “defendant”) denying his application for Disability Insurance Benefits (“DIB”) under the Social Security Act (the “Act”).

The Commissioner filed a certified copy of the Administrative Record, Dkt. No. 9, and both parties briefed the matter in accordance with General Order 18, which provides that an appeal taken from the Commissioner’s decision denying benefits will be treated as if the parties have filed cross-motions for a judgment on the pleadings, Dkt. Nos. 10, 12, 15.

On September 26, 2023, shortly after hearing oral argument on the parties’ cross-motions, U.S. Magistrate Judge David E. Peebles advised by Report & Recommendation (“R&R”) that (1) the Commissioner’s motion be granted, (2) plaintiff’s motion be denied, (3) the Commissioner’s final decision be affirmed, and (4) plaintiff’s complaint be dismissed. Dkt. No. 18.

Plaintiff has filed objections, Dkt. No. 19, which have now been briefed, Dkt. No. 20. Upon *de novo* review, plaintiff’s objections must be overruled.

¹ In accordance with a May 1, 2018 memorandum issued by the Judicial Conference’s Committee on Court Administration and Case Management and adopted as local practice in this District, only the first name and last initial of plaintiff will be mentioned in this opinion.

Plaintiff contends that Judge Peebles should have recommended a remand because the ALJ failed to provide a clear explanation of the “supportability” regulatory factor vis-à-vis Dr. Hussamy’s opinion. But as the Commissioner explains in her opposition brief, Judge Peebles correctly concluded that this kind of a procedural error does not *always* warrant a remand. As the R&R explained, remand is unnecessary if the court can glean the ALJ’s rationale as to the relevant regulatory factor. *See, e.g., John M. v. Kijakazi*, 2022 WL 3500187, at *2 (N.D.N.Y. Aug. 18, 2022) (Sannes, J.) (explaining that while “a substantial evidence review” cannot cure this procedural error, affirmance may still be appropriate “where the ALJ’s consideration of the relevant factors can be gleaned from the ALJ’s decision as a whole”).

Plaintiff’s other objections are focused on underlying arguments presented to the Magistrate Judge in the first instance. A review of these renewed and re-framed arguments confirms that there is no good reason to second-guess the R&R’s conclusions on these points. Accordingly, the R&R is accepted and will be adopted in all respects. *See* 28 U.S.C. § 636(b)(1)(C).

Therefore, it is

ORDERED that

1. The Report & Recommendation is ACCEPTED;

2. The Commissioner’s motion for a judgment on the pleadings is

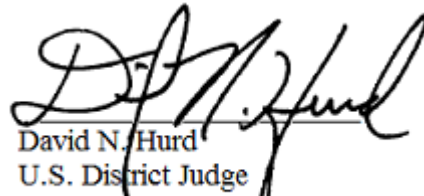
GRANTED;

3. Plaintiff's motion for a judgment on the pleadings is DENIED;
4. The Commissioner's final decision is AFFIRMED; and
5. Plaintiff's complaint is DISMISSED.

The Clerk of the Court is directed to enter a judgment accordingly and close the file.

IT IS SO ORDERED.

Dated: October 20, 2023
Utica, New York.



David N. Hurd
U.S. District Judge